

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jan 11, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LUIS ANDRE PEREZ,

Petitioner,

v.

MICHAEL SPARBER,

Respondent.

NO: 2:22-CV-00238-RMP

ORDER DISMISSING ACTION

BEFORE THE COURT are Petitioner Luis Andre Perez's First Amended Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241, ECF No. 18, a Motion to Amend to Name Proper Respondent, ECF No. 15, and a Motion for Emergency Discretionary Review forwarded to this Court from the Ninth Circuit Court of Appeals on January 4, 2023, ECF No. 20. Petitioner, a pretrial detainee at Spokane County Detention Services, is proceeding *pro se* and *in forma pauperis*. ECF No. 13. Respondent has not been served.

By Order filed December 2, 2022, the Court advised Petitioner of the deficiencies of his initial petition and granted him leave to amend within sixty (60)

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1 days. ECF No. 13. On December 6, 2022, the Court addressed Petitioner's  
2 submissions of supplemental documents, directing him to present no more of these  
3 documents unless directed to do so by the Court and reminding Petitioner of the  
4 opportunity to file an amended petition. ECF No. 16. Nevertheless, Petitioner has  
5 continued to present unsolicited supplemental materials to the Court, ECF Nos. 17,  
6 19.

7 The Court notes that the first 11 pages of ECF No. 19 are duplicative of ECF  
8 No. 9 at 1–11. The first seven pages of ECF No. 17 are titled, “In Memorandum of:  
9 Officer Andrea Lauren Porter’s Admissions of Guilt on Recorded Phone Calls  
10 Within the State’s Possession (Federal Indictments) – Petitioner’s ‘Impeachment  
11 Evidence.’” Plaintiff complains that the state has failed to act to prosecute Ms.  
12 Porter. *Id.* at 1–7. The United States Supreme Court has long held that “a private  
13 citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of  
14 another.” *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). To the extent that  
15 Petitioner complains of the non-prosecution of the complaining witness, he is not  
16 entitled to relief in this Court.

17 Although granted the opportunity to amend his petition to demonstrate that he  
18 has exhausted his state court remedies regarding his habeas corpus claims, *see* ECF  
19 No. 13 at 3, Petitioner has not done so. Instead, he asserts that “[t]o proceed through  
20 the state courts would nullify my constitutional rights and silence every victim who  
21 reports sexual abuse and outrageous misconduct by a state actor while under color of

1 state law.” ECF No. 18 at 2. Petitioner contends that “[a]s a victim of repeated  
2 sexual abuse and assaults with a deadly weapon, I deserve my dignity, my integrity,  
3 and ultimately my innocence. The state has already conflicted with federal law and  
4 policy. If an officer of the law can get away with this type of conduct and continue  
5 to humiliate the victim by fabricating stories out to make him be the perpetrator,  
6 what is the purpose of P.R.E.A?” *Id.* at 7. Petitioner contents that “[i]f this Court  
7 does not intervene, the irreparable harm would be for victim’s to stop using their  
8 voice in fear of retaliation. No appellate process can restore that. Nothing  
9 throughout the state appellate process can restore my I, IV, V, VI, VIII, and XIV  
10 Amendments of the U.S. Constitution. More importantly, nothing can restore the  
11 emotional damage and psychological warfare I have dealt with.” *Id.* (as written in  
12 original). He asks this Court to intervene and restrain his prosecution in Spokane  
13 County Superior Court, case No. 22-1-10032-32.

14 For the reasons set forth in the Order Granting Leave to Proceed *in Forma*  
15 *Pauperis* and Order to Amend, ECF No. 13 at 4–5, the Court finds that abstention  
16 under the principles of *Younger* is appropriate in this case and declines Petitioner’s  
17 request to intervene to enjoin state criminal proceedings. *See Younger v. Harris*, 401  
18 U.S. 37, 53–54 (1971); *Kenneally v. Lungren*, 967 F.2d 329, 331 (9th Cir. 1992);  
19 *Perez v. Ledesma*, 401 U.S. 82, 85 (1971). Petitioner may challenge the foundation  
20 for his prosecution and the veracity of the complaining witness in the pending state  
21 court criminal proceeding.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. This action is **DISMISSED without prejudice** to pursuing available  
3 state court remedies.

4 2. All pending Motions are **DENIED AS MOOT.**

5 3. The District Court Clerk shall **STRIKE** any pending hearings and  
6 deadlines in this action.

7 4. Petitioner shall file no other documents in this action, other than a  
8 timely Notice of Appeal.

9 5. The Court certifies that any appeal from this decision could not be  
10 taken in good faith, and there is no basis upon which to issue a  
11 certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

12 A certificate of appealability is therefore **DENIED.**

13 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
14 Order, enter judgment, provide a copy to Petitioner at his last known address, and  
15 **close** the file.

16 **DATED** January 11, 2023.

17  
18 *s/ Rosanna Malouf Peterson*  
19 ROSANNA MALOUF PETERSON  
20 Senior United States District Judge  
21